

## **Exhibit A**

Declaration of Ruben J. Escano

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

RUBEN ESCANO,

Plaintiff,

v.

RCI, LLC, a Delaware Corporation et al.

Defendants.

Case No. 2:22-cv-00360-DHU-GJF

**DECLARATION OF RUBEN J. ESCANO IN OPPOSITION  
TO DEFENDANT RCI, LLC'S MOTION FOR SUMMARY JUDGMENT, (Doc. 164)**

Pursuant to 28 U.S.C. § 1746, I, RUBEN J. ESCANO, declare as follows:

1. My name is Ruben J. Escano. I am over the age of eighteen (18) and I make this Declaration based upon my personal knowledge and as a result of my inquiry and investigation of the facts stated herein. If called to testify, I will testify to the facts herein.

**The Phone Calls at Issue**

2. On October 18, 2008, I registered my phone number ending in -8938 on the Federal Trade Commission's National Do Not Call Registry. My phone number has been listed on the registry ever since. An email confirmation from the FTC is attached to *Plaintiff's Response in Opposition to RCI, LLC's Motion for Summary Judgment* (the "Response") as **Exhibit C**.

3. Prior to February 8, 2018, I did not have any business relationships with Defendant RCI, LLC ("RCI"); Defendant Mexican Riviera Resorts Unlimited, S.A de C.V. ("MXRRU"); Timescape Resorts, LLC ("Timescape"); or any related entities or persons.

4. Between February 8, 2018 and continuing to January 20, 2021, I received twenty-seven unsolicited phone calls on my cell phone, which began with prerecorded messages

announcing the calls as coming from any of the following hospitality brands: Marriott Hotels, Hyatt Hotels, Booking.com, Disney World, and Hilton Hotels. A compilation of excerpts of my phone bills showing my receipt of these calls is attached to the Response as **Exhibit D**.

5. I received the last nine of these calls in Silver City, New Mexico.

6. Some of the calls included several seconds of hold music after the prerecorded message and prior to a phone representative coming on the line. For example, during the February 8, 2018 call there was 25 seconds of hold music prior to a phone representative coming on the line, and during the April 16, 2018 call there was 52 seconds of hold music prior to a phone representative coming on the line.

7. I took detailed notes of all of the calls and made audio recordings of fourteen of them. (One of these fourteen audio recordings—of the first May 14, 2018 call (there were two calls received on May 14, 2018)—only contains unintelligible background call center chatter. RCI appears to have filed my audio recording of this first May 14, 2018 call as Exhibit N to its Motion for Summary Judgment (Doc. 164). But RCI does not appear to have filed the audio recording of the second May 14, 2018 call. I am filing an audio recording of this second May 14, 2018 call as **Exhibit U**. RCI did file its transcript for the second May 14, 2018 call, as Document 164-6 at 11.)

8. I made audio recordings of the calls using an app on my cell phone. I do not have audio recordings of all of the calls because in late 2018, Google changed the policy for apps on its Android App Store. At the time, I used an Android phone. This new policy restricted the functionality of apps which recorded phone calls. After this policy-change, I found it difficult to reliably record these telemarketing calls. A capture of an August 15, 2018 Phone Arena news article reporting on this policy-change is attached to the Response as **Exhibit T** and available at

[https://www.phonearena.com/news/no-call-recording-support-android-9-pie-phone-root-problem-fixed\\_id107792](https://www.phonearena.com/news/no-call-recording-support-android-9-pie-phone-root-problem-fixed_id107792) [<https://perma.cc/4SGD-PAQQ>].

9. I have reviewed RCI's transcripts of my audio recordings, filed as Documents 164-5 and 164-6. There are several errors and omissions in RCI's transcripts. Based on my personal recollection of the calls, my notes, and audio recordings, I have produced transcripts of these calls which I believe to be a true and accurate reflection of what was said and by whom. The transcripts are attached to the Response as **Exhibit E**. One note: the February 8, 2018 call was dropped and the phone representative called me back. That is why there are two audio files and transcripts for this date, even though I only allege one violative call for this date.

10. All of the prerecorded messages were made with the same woman's voice and with similar excited intonations and cadence.

11. All of the prerecorded messages announced a supposedly exclusive or pre-selected deal on vacation packages.

12. All pricing offered during the calls was for \$999.

13. During a February 8, 2018 call, a phone representative offered me a \$999 vacation package to the BlueBay Grand Esmeralda in Cancun, Mexico, and the Reserve at Paradisus in Punta Cana, Dominican Republic.

14. During an April 3, 2018 call, a phone representative offered me a \$999 vacation package to the Laguna Suites Golf and Spa Hotel, and the Ocean Spa Hotel, both in Cancun, Mexico; and Villas Sol Hotel and Beach resort in Costa Rica.

15. During an April 16, 2018 call, a phone representative offered me a vacation package to the BlueBay Grand Esmeralda in Cancun, Mexico.

16. During an August 24, 2020 call, a phone representative offered me a \$999 vacation package to Calypso Cay Resort in Florida.

17. During the February 8, 2018 call, a phone representative named Lucia told me that the \$999 price for the vacation package was a discounted price “in exchange for you touring our resorts[.]” During this call, another phone representative named Brandon stated, “it’s a basic form of marketing strategy, we’re getting you down here to actually tour the property. All we want is 90 minutes of your time when you’re in Mexico alone.”

18. During the April 3, 2018 call, a phone representative named Kelsey stated that the \$999 price for the vacation package was a discounted price in exchange for attending a “90-minute walk-through of everything that my resorts have to offer[.]” Kelsey also stated that, “I don’t make a penny off the package price. I don’t make a penny if you purchase timeshare [sic] in Cancun. I only make my commission whenever I get you to Cancun to attend my timeshare tour.” During this call, another phone representative named Scotty stated that the \$999 price for the vacation package was “in exchange for 90-minutes of your time previewing the host resorts.”

19. During a May 1, 2018 call; a May 3, 2018 call; and a September 10, 2019 call, I spoke with phone representatives and requested that they place my phone number on a “do not call” list.

20. All of the times that I asked where the phone representatives were calling from, they said either Florida or the Country of Mexico. However, the phone numbers that displayed on my caller ID were not for those locations.

21. On or around January 14, 2021, I sent demand letters to RCI, Timescape, and affiliates of MXRRU. The letters threatened legal action for the telemarketing calls.

22. After I sent the demand letters, I received only one more call—the January 20, 2021 call.

**MXRRU**

23. During the April 3, 2018 call, I gave my credit card information to a phone representative in attempt to investigate the source of the call. My credit statement showed a subsequent charge from “MXRRU.” My credit card statement showing the charge is attached to the Response as **Exhibit F**.

24. Attached to the Response as **Exhibit G** is MXRRU’s Initial Disclosures.

25. Attached to the Response as **Exhibit H**, is a compilation of annual reports for MXRRU filed with the Florida Secretary of State, from the year 2012 through 2023.

26. Attached to the Response as **Exhibit I**, is a July 22, 2011 letter to Orlando Arroyo from the Canadian Radio-television Telecommunications Commission. It is available at <https://crtc.gc.ca/eng/archive/2011/lt110722d.htm>.

27. Attached to the Response as **Exhibit L**, is a screenshot of a section of [www.sunsetworldresorts.com/resorts/](http://www.sunsetworldresorts.com/resorts/) [<https://perma.cc/LMR6-VVLP>].

28. Attached to the Response as **Exhibit M**, is a June 22, 2017 Notice of Apparent Liability for Forfeiture rendered by the Federal Communications Commission.

29. Attached to the Response as **Exhibit N**, is a print out of an October 17, 2011 Law 360 article, available at <https://www.law360.com/articles/278430/>.

30. Attached to the Response as **Exhibit O**, is a print out of a June 23, 2017 Miami New Times article available at <https://www.miaminewtimes.com/news/fcc-fines-miami-man-120-million-for-making-96-million-robocalls-in-three-months-9440277> [<https://perma.cc/9TLJ-D2FG>].

31. Attached to the Response as **Exhibit P**, is a print out of a June 27, 2017 Yahoo News article, available at <https://finance.yahoo.com/news/tripadvisor-hunted-robocaller-made-100-million-calls-random-people-124348420.html>.

**RCI**

32. During the February 8, 2018 call, a phone representative stated, “We’re a marketing division under RCI[.]”

33. Attached to the Response as **Exhibit B**, is Wyndham Destinations, Inc.’s SEC Form 10-K for the fiscal year ending December 31, 2018.

34. Filed contemporaneously under seal as **Exhibit K**, is an affiliation contract between RCI and Promotora Sunset Beach Clubs S.A de C.V. (“Promotora”).

35. Filed contemporaneously under seal as **Exhibit R**, is an amendment to an affiliation contract between RCI and Promotora.

36. Attached to the Response as **Exhibit S**, is a capture of [https://www.prweb.com/releases/Sunset\\_World\\_Group\\_Reaffirms\\_its\\_Leadership\\_in\\_the\\_Vacation\\_Industry\\_Receiving\\_Various\\_Recognitions\\_from\\_RCI/prweb17341776.htm](https://www.prweb.com/releases/Sunset_World_Group_Reaffirms_its_Leadership_in_the_Vacation_Industry_Receiving_Various_Recognitions_from_RCI/prweb17341776.htm) [<https://perma.cc/975H-97VY>].

Dated this 1st day of April, 2024, in Grant County, New Mexico.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury and of the laws of the United States that the foregoing is true and correct.

/s/ Ruben J. Escano

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**Ruben J. Escano**